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FIFTH DIVISION
December 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 19979
)	
DEVONTE JEMISON,)	
)	Honorable
Defendant-Appellant.)	Charles P. Burns,
)	Judge Presiding.
)	

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Epstein and Justice McBride concurred in the judgment.

ORDER

¶ 1 **Held:** The trial court erred in allowing the State to introduce evidence of the defendant's prior juvenile adjudication and must be reversed.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Devonte Jemison was convicted of first degree

murder (720 ILCS 5/9-1(a)(1) (West 2006)) and for personally discharging a firearm that caused the death of Brandon Rozelle and sentenced to 50 years in the Illinois Department of Corrections. On appeal, Jemison claims: (1) he was denied a fair trial when the trial court improperly allowed the State to impeach his credibility with a prior juvenile adjudication; (2) he was denied a fair trial when the trial court gave the jury misleading and confusing instructions; (3) the automatic transfer provision of the Illinois Juvenile Court Act is unconstitutional; and (4) the mittimus must be amended to reflect the correct amount of credit to which Jemison is entitled for the time he spent in custody prior to his sentence. For the reasons set forth below, we reverse defendant's conviction and remand for a new trial.

¶ 3

I. BACKGROUND

¶ 4 Defendant Devonte Jemison, age 15 at the time of the offense, was charged as an adult with first degree murder and with personally discharging a firearm that caused the death of Brandon Rozelle.

¶ 5 Prior to trial, the State filed a motion *in limine* requesting, among other things, that it be allowed to impeach Jemison with two prior juvenile adjudications. Jemison's counsel argued in a hearing on the motion *in limine* that prior juvenile

adjudications are not admissible to impeach a defendant under *People v. Montgomery*, 47 Ill. 2d 510 (1971). The State responded that if Jemison is going to testify, his credibility will be an issue. Jemison's counsel replied that Jemison is going to testify at trial and is not going to state anything contrary to the police report, thus, the state should not be allowed to impeach his testimony with juvenile adjudications.

¶ 6 In a hearing held the next day, the State argued juvenile adjudications are admissible for the purpose of impeachment under the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/5-150(1)(c) (West 2008)) and *People v. Harris*, 231 Ill. 2d 582 (2008). Jemison's counsel argued that *Harris* is distinguishable because the defendant in that case testified that he had not been in trouble before even though he had juvenile adjudications, unlike the instant case, where counsel claimed he will not ask Jemison on direct examination whether he has been in trouble before his arrest in this case.

¶ 7 The trial court found that under the Act and *Harris*, Jemison's prior juvenile adjudication is admissible for impeachment purposes as long as the court performs a *Montgomery* balancing test. The trial court then weighed the probative value of the adjudications against its prejudicial effect and found that under the Act, the State could impeach Jemison with a record

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of his prior adjudication for possession of a stolen motor vehicle but not with his prior adjudication for aggravated battery.

¶ 8 At trial, the State called witness James Jones, age 12 at the time of the shooting on July 4, 2007. Jones testified he observed Jemison load bullets into a gun on the night before the shooting. The next day, Jones was with Jemison at their friend Selena Schaeffer's home and he observed Jemison with a gun. Later, while Jemison was across the street, Jones observed Roselle walk up near Schaeffer's home, stop and ask Jemison to come over to him. Jones testified that the pair started to argue and he observed Jemison point a gun at Rozelle. Jones then ran from the scene. He turned around when he heard a gunshot and observed Rozelle lying in the street. Jones then observed Jemison walk across the street, throw the gun in bushes and enter Schaeffer's house.

¶ 9 The State called witness Ashley Head, age 13 at the time of the shooting, who testified that Jemison had told her prior to the shooting that he regularly carried a gun in his book bag, "[i]n case he ever get into it." She testified that on July 4, 2007, she observed Jemison point a gun at Rozelle and shoot him during an argument near her home. Head observed Rozelle fall to the ground after being shot.

¶ 10 The State called witness Stefan Nikodijevic, age 13 at the time of the shooting, who testified that he had observed Jemison in possession of a gun on two occasions prior to the shooting. Nikodijevic testified that on the day of the shooting, he observed Jemison on Schaeffer's porch, located across the street from his home. Nikodijevic testified that he went to the side of his house to light firecrackers then heard Jemison argue with Rozelle. Nikodijevic heard Jemison say, "You want to keep talking that shit," followed by a gunshot. Nikodijevic went to the front of his house and observed Rozelle lying in the street.

¶ 11 Jemison testified in his own defense, admitting he shot Rozelle but that he did not intend to shoot him, rather he only intended to scare Rozelle away. He testified that he did not know there was a bullet in the chamber of the gun when it fired.

¶ 12 He also testified that he plead guilty in juvenile court to possession of a stolen motor vehicle in August of 2007.

¶ 13 The jury found Jemison guilty of first degree murder and that he personally discharged the gun that caused Rozelle's death.

¶ 14 The trial court sentenced Jemison to 25 years for the murder and 25 years for discharging the firearm, for a total of 50 years in prison. The trial court gave Jemison 1,107 days of

pre-sentencing credit, and stayed the mittimus until Jemison's motion to reconsider was ruled on. After denying Jemison's motion to reconsider, the trial court increased Jemison's credit to 1,120 days of credit to account for the additional days between the initial sentencing and the ruling on the motion to reconsider.

¶ 15 Jemison filed this timely appeal.

¶ 16 II. ANALYSIS

¶ 17 In this appeal, Jemison argues: (1) the trial court erred when it allowed the State to introduce evidence of a prior juvenile adjudication; (2) the trial court abused its discretion when it gave the jury misleading instructions; (3) the automatic transfer provision of the Illinois Juvenile Court Act is unconstitutional; and (4) the mittimus needs to be corrected to reflect the proper amount of pre-sentencing credit.

¶ 18 A. Evidence of a Prior Juvenile Adjudication

¶ 19 Normally, the determination of whether a prior conviction is admissible for impeachment purposes is within the discretion of the trial court, and a reviewing court may overturn a trial court's decision only when the record demonstrates the court abused that discretion. *People v. Rodriguez*, 408 Ill. App. 3d 782, 794 (2011). However, in this case, we are presented with an issue of the admission of a prior juvenile adjudication, not a

prior adult conviction, which brings in the Juvenile Court Act of 1987 and a series of distinct caselaw on the subject beginning with *Montgomery*. Therefore, we are presented with a legal issue, one that includes statutory construction, and our review is *de novo*. *People v. Villa*, 2011 IL 110777, ¶22.

¶ 20 Jemison claims the trial court erred when it allowed the State to introduce evidence of a prior juvenile adjudication. The State claims Jemison forfeited this issue when he failed to raise it in a posttrial motion. The Illinois Supreme Court has held that a "defendant must both specifically object at trial and raise the specific issue again in a posttrial motion to preserve any alleged error for review." *People v. Woods*, 214 Ill. 2d 455, 470 (2005).

¶ 21 However, under the plain error doctrine, a reviewing court may consider unpreserved error when: (1) a clear or obvious error occurs, and the evidence is so closely balanced that the error alone threatens to tip the scales of justice against the defendant; or (2) a clear or obvious error occurs and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 187-88 (2005); *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). In order to find plain error, this court must

first find that the trial court committed error. *People v. Rodriguez*, 387 Ill. App. 3d 812, 821 (2008).

¶ 22 Jemison claims a juvenile adjudication is not admissible as impeachment evidence under *People v. Montgomery*, 47 Ill. 2d 510, 516 (1971). In *Montgomery*, our supreme court adopted a proposed draft of Federal Rule of Evidence 609, which provides generally that evidence of a prior conviction is admissible to attack a witness's credibility only if the crime: (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, or (2) involved dishonesty or false statement regardless of the punishment unless (3), in either case, the judge determines that the probative value of the evidence of the crime is substantially outweighed by the danger of unfair prejudice. *Id.*

¶ 23 The court in *Montgomery* stated that evidence of juvenile adjudications is generally not admissible under this rule. *Id.* at 517.

¶ 24 Following *Montgomery*, Illinois courts did not allow the admission of prior juvenile adjudications until 1998, when the Illinois legislature amended section 5-150(1)(c) of Act (705 ILCS 405/5-150(1)(c) (West 2010)). *Villa*, 2011 IL 110777, ¶30.

¶ 25 Section 5-150(1)(c) of the Act provides:
"(1) Evidence and adjudications in

proceedings under this Act shall be
admissible:

(c) in proceedings under this Act or in
criminal proceedings in which anyone who has
been adjudicated delinquent under Section 5-
105 is to be a witness including the minor or
defendant if he or she testifies, and then
only for purposes of impeachment and pursuant
to the rules of evidence for criminal
trials." 705 ILCS 405/5-150(1)(c) (West
2010).

¶ 26 After section 5-150(1)(c) was enacted, the Fourth
District continued to rule in line with *Montgomery*, in that
juvenile adjudications are not admissible against a testifying
defendant. *Villa*, 2011 IL 110777, ¶31 (citing *People v. Coleman*,
399 Ill. App. 3d 1150 (2010)). Meanwhile, the Second District
strayed from *Montgomery*, finding that section 5-150(1)(c) of the
Act trumps *Montgomery*. *Id.* (citing *People v. Villa*, 403 Ill.
App. 3d 309, 316-18 (2010)).

¶ 27 The parties here make the same arguments as those in
Villa. Jemison claims the plain language of section 5-150(1)(c)
does not override, but rather is limited by, *Montgomery*. While
the State claims the statute trumps *Montgomery*.

¶ 28 The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent, the best evidence of which is the language of the statute. *Villa*, 403 Ill. App. 3d at 316. We must construe the statute as a whole, so as not to render any part of it superfluous and meaningless. *Id.* Although an amendment to a statute may give rise to a presumption that the legislature intended to change the law, such presumption is not conclusive and may be overcome by other circumstances and considerations. *Villa*, 2011 IL 110777, ¶35.

¶ 29 In *Villa*, our supreme court recently resolved the conflict presented here and held that section 5-150(1)(c) of the Act allows the admission of juvenile adjudications against a testifying defendant for impeachment only in accordance with *Montgomery* and its progeny. *Id.* at ¶41.

¶ 30 In *Villa*, the defendant was arrested after a drive-by shooting. He gave a statement to police where he said the shooting occurred after he was beaten by a group of young men in his neighborhood. *Id.* at ¶7. The defendant told police that after the beating, he called his friend Angel, who picked him up along with another friend Joe in an SUV. *Id.* The defendant told police that Joe had a gun and they went looking for the group that beat him. They found the group in front of a house. While driving by the house, defendant said to Joe "Get them Nigga's'"

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and Joe fired his gun at them. *Id.* at ¶10.

¶ 31 At trial, defendant testified that only part of the statement he gave police was true. *Id.* at ¶12. He testified that he called Angel after the beating to drive Joe home, who defendant thought was in danger. *Id.* Defendant testified that Joe told Angel to drive by the house where the group was located. Defendant testified that when Joe shot at the group, the passengers in the car were scared and surprised. Defendant testified that he did not tell Joe to "get them niggas." *Id.*

¶ 32 Defendant also testified that he initially told police he did not tell Joe to shoot anyone but the detectives did not believe him. He testified that he was scared and "started throwing some things in" to make his story more believable. *Id.* When asked on direct examination why he would sign a statement containing false information, defendant testified that he did not know and was scared, stating: "I've never been in a situation like this before."

¶ 33 The State published a certified copy of defendant's prior juvenile adjudication for burglary and referred to the juvenile adjudication in closing and rebuttal arguments, asserting that the burglary adjudication was a basis for concluding that defendant's trial testimony was not truthful. *Id.* at ¶15.

¶ 34 The jury returned a verdict finding defendant guilty of aggravated battery with a firearm and aggravated discharge of a firearm. The defendant appealed, arguing the trial court erred by allowing the State to impeach him with his juvenile adjudication. *Id.* at ¶16. The appellate court affirmed defendant's conviction, finding that under section 5-150(1)(c), a juvenile adjudication may be admitted against a testifying defendant for impeachment purposes, subject to the balancing test set forth in *Montgomery*. *Id.* at ¶17. In addition, the appellate court held that defendant's juvenile adjudication was admissible for the independent reason that he "opened the door" to its use. *Id.*

¶ 35 Our supreme court reversed, holding section 5-150(1)(c) does not change the holding in *Montgomery* because the 1998 amendment to the statute maintained the phrase "pursuant to the rules of evidence for criminal trials." *Id.* at ¶36. The court noted that subsequent cases to *Montgomery* interpreted the phrase "pursuant to the rules of evidence for criminal trials" to mean: pursuant to the *Montgomery* decision. *Id.* The court stated:

"The legislature chose to retain this language, without modification, when it amended section 5-150(1)(c). Where, as here, statutory language has acquired a settled

meaning through judicial construction and that language is retained in a subsequent amendment of the statute, such language is to be understood and interpreted in the same way unless a contrary legislative intent is clearly shown." *Id.*

¶ 36 Therefore, the court found that the legislature intended the phrase "pursuant to the rules of evidence for criminal trials" to continue to have the same meaning it had for well over a decade. *Id.*

¶ 37 The court noted that an exception to this rule occurs when the testifying defendant "opens the door" to admission of a juvenile adjudication for impeachment purposes. *Id.* at ¶38. The State in *Villa* argued that defendant "opened the door" to admission of his juvenile adjudication by testifying at trial that he had "never been in a situation like this before." The court instructs that the pivotal question is whether the defendant was attempting to mislead the jury about his criminal background. *Id.* at ¶49. In *Villa*, our supreme court found that the defendant was not attempting to mislead the jury about his criminal background, rather he was referring to the interrogation by detectives, not the shooting, when he stated he had "never been in a situation like this before." *Id.* at ¶50.

¶ 38 The trial court in the instant case, like the trial court in *Villa*, found that Jemison's juvenile adjudication was admissible for impeachment purposes as long as it performed the *Montgomery* balancing test. However, as the supreme court instructs in *Villa*, *Montgomery* bars admission of juvenile adjudications, thus, the trial court here erred.

¶ 39 The one exception is when the testifying defendant "opens the door." We cannot say Jemison opened the door to admission of his juvenile adjudication for possession of a stolen motor vehicle, rather he touched on his criminal background on direct examination in response to an adverse *in limine* ruling in order to "blunt the impact" of the State's anticipated evidence. *Id.* at ¶49. Our supreme court in *Villa* instructs that in such a case, the defendant cannot be said to have opened the door to admission of a juvenile adjudication. *Id.*

¶ 40 Furthermore, we find plain error under the second prong of the plain error doctrine. The error in this case is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process because Jemison was unable to rebut the strong evidence in favor of a conviction due to the admission into evidence of his juvenile adjudication for possession of a stolen motor vehicle. The result is that Jemison's honesty was at issue when he testified

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that he did not intend to shoot the victim, only to scare him, and he thought there were not any bullets in the gun.

Accordingly, we reverse and remand for a new trial.

¶ 41 In light of our disposition, we need not consider defendant's additional arguments in this appeal.

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County and remand for a new trial.

¶ 44 Reversed and remanded.